

ALBERT DiGIULIO, JR.
GENUINO J. GRANDE AND JEREMY V. COHEN

IBLA 76-502

Decided August 4, 1976

Appeal from a decision of the Montana State Office, Bureau of Land Management, denying a request for approval of an assignment in oil and gas lease M 30759 (Acq.).

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Under 30 U.S.C. § 188(c) (1970), the Secretary of the Interior has no authority to reinstate an oil and gas lease terminated by operation of law for failure to make timely payment of rental, unless the rental payment is tendered at the proper office within 20 days of the due date.

2. Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases: Termination

Denial of a request for approval of an assignment of an interest in an oil and gas lease is proper where (1) the lease had terminated by operation of law pursuant to 30 U.S.C. § 188(b) (1970) for failure to make timely payment of rental, and where (2) the assignor is a stranger to the lease, and the record is devoid of any assignment from the lessees of record to the assignor.

APPEARANCES: Albert DiGiulio, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Noncompetitive acquired lands oil and gas lease M 30759 (Acq.) was issued by the Montana State Office, Bureau of Land Management

(BLM), effective January 1, 1975, to Genuino J. Grande and Jeremy V. Cohen as the successful drawees for Parcel No. 322 in the November 1974 simultaneous drawing procedure held pursuant to 43 CFR Subpart 3112.

On January 26, 1976, one Albert DiGiulio, Jr., filed an assignment to himself of a 40 percent interest in the record title of the lease from Brantford Capital Corporation, a stranger to the record title, together with a request for approval of the assignment.

By decision dated January 29, 1976, BLM denied the request for approval of the assignment for the following reasons:

1. Oil and Gas lease M 30759 Acquired terminated on January 1, 1976, because the second years' rental was not paid on or before January 1, 1976, the anniversary date of the lease.
2. Brantford Capital Corporation who signed the assignment as assignor, never held an interest in the lease. It is not possible for an assignor to assign or transfer an interest in a lease which it does not own. At the time the lease terminated, the original lessees, Genuino J. Grande and Jeremy V. Cohen, were the record titleholders. If an assignment of the lease was made to Brantford Capital Corporation, instrument of transfer was never filed for approval in this office. We do not have any evidence that the corporation has ever filed its qualifications to hold federal oil and gas leases.

By letter of February 12, 1976, DiGiulio tendered to BLM his personal check for \$ 352, representing the annual rental due on the lease, and requested its acceptance. The check was received by BLM on February 17. In his letter, DiGiulio stated:

In checking with this Bureau Office, I was informed that the annual rental statement for this lease was mailed to the owner of record, care of, Stewart Capital Corporation, 100 South Wacker Drive, Room 202, Chicago, Illinois 60606. I have been since informed by Stewart Capital Corporation that they mailed this rental notice not to Mr. Grande, the owner of record, but to an unrelated third party. As a result, this statement for rental due was never received by Mr. Grande. If Mr. Grande had received this notice of rental due, it definitely would have been paid.
* * * This circumstance is definitely and certainly not due to a lack of reasonable diligence on the part of Mr. Grande.

On February 19, 1976, BLM returned the \$ 352 check to DiGiulio and informed him that the lease, which was issued to Grande and Cohen, automatically terminated by operation of law on January 1, 1976, for nonpayment of the second year's rental, pursuant to the Act of July 29, 1954, 30 U.S.C. § 188(b) (1970); that the requirements for reinstatement of the lease under the Act of May 12, 1970, 30 U.S.C. § 188(c), had not been met because the rental had not been tendered within 20 days of the anniversary date of the lease, and no proof has been furnished that failure to pay the rental when due was either justifiable or not due to a lack of reasonable diligence. BLM also informed him that the statement of rental due, to which he referred, is a courtesy notice and is not required by law.

DiGiulio appealed BLM's decision of January 29, denying approval of the assignment, stating that the \$ 10.00 filing fee he submitted with the assignment has been retained by the Bureau. He asserts that the 40 percent interest in the lease was conveyed to him by Brantford Capital Corporation with the knowledge and consent of Cohen and Grande, it being the same interest that the latter conveyed to Brantford Capital Corporation. He further states that, upon receipt of the decision, he submitted the annual rental with the knowledge and consent of Cohen and Grande and received the BLM's February 19 response rejecting the rental payment; that he then informed Cohen and Grande who filed a petition for reinstatement of the lease. He contends that the assignment should have been approved but, since determination of that may require a determination by the Board of the issues raised by the petition for reinstatement, he requests that a determination not be made on the assignment prior to final resolution of the petition for reinstatement.

Grande and Cohen had filed a petition for reinstatement of the lease in the interim with a copy to this Board, in which they both allege that their residence and business addresses are in New York and that at no time has either of them maintained any mailing or legal address at "100 South Wacker Drive, Room 202, Chicago, Illinois 60606," and that neither of them has ever authorized any person or business entity to establish said address for them or to represent to anyone that said address was theirs. They also state:

On information and belief, a signature card [drawing entry card] is in the possession of the aforementioned Bureau Office. Co-petitioners acknowledge that the signatures on that card are genuine.

On information and belief, the signature card also contains the Chicago, Illinois address set forth * * * above. At the time co-petitioners signed the card,

no address appeared thereon and neither of the co-petitioners placed or directed or instructed or authorized anyone to place said address on the signature card. The last time either co-petitioner saw the signature card was when they each signed it at which time no address appeared thereon.

They further allege that they never received a notice of payment due for the rental, otherwise the rental would have been timely paid; also, they never received a Notice of Termination of lease, in which case a proper and timely reinstatement request would have been filed within the allotted 15 days provided by 43 CFR 3108.2-1(c).

The arguments advanced by appellant DiGiulio and by Grande and Cohen in their petition for reinstatement are totally lacking in merit.

At the outset, we point out that the drawing entry card signed by Grande and Cohen contains the following names and address typed in capital letters on its reverse side:

GRANDE, GENUINO J.
COHEN, JEREMY V.
100 SOUTH WACKER DR. - RM. 202
CHICAGO, ILLINOIS 60606

If the card did not contain this information when they signed it, the filing was apparently made through an oil and gas filing service, which service evidently added the above information. Filing services have no official connection with the Bureau of Land Management and an applicant who avails himself of such service does so at his own risk, insofar as the Department is concerned, and is responsible for the accuracy of the information appearing on the card.

If the drawing entry card had been filed without an address, it would have been rejected and a lease would not have issued. See Albert E. Mitchell, III, 20 IBLA 302 (1975). However, we note that in a letter received on December 10, 1974, with which Grande and Cohen submitted the first year's rental, they requested that the lease should be issued to the following address:

Mr. Genuino J. Grande
Mr. Jeremy V. Cohen
c/o Flaherty, Cohen & Grande
Liberty Bank Bldg.
Buffalo, NY 14203.

BLM failed to heed this request but issued the lease with the address shown on the drawing entry card.

[1] The petition for reinstatement has to be denied. The oil and gas lease terminated by operation of law and not by the act of any official when the annual rental payment was not received in the proper office by the close of business on January 2 (the anniversary date, January 1, 1976, was a legal holiday and the office was closed). 30 U.S.C. § 188(b) (1970); 43 CFR 3108.2-1(a). A petition for reinstatement may be considered if, and only if, the payment is paid or tendered within 20 days of the anniversary date. 30 U.S.C. § 188(c) (1970); 43 CFR 3108.2-1(c). The payment was due in BLM on January 2, 1976. Appellant's tender of payment was not received in that office until February 17, 1976, which is 46 days after the lease terminated by operation of law pursuant to 30 U.S.C. § 188(b), and 28 days after termination of the 20-day period allowed by the law to permit the filing of a petition for reinstatement. Therefore, we are precluded by law from giving favorable treatment to the petition for reinstatement filed by Grande and Cohen. 1/ Merilyn K. Buxton, 24 IBLA 269 (1976); Edward Malz, 24 IBLA 251 (1976).

Concerning the failure of the lessees of record to receive the notice of payment for rental due, we repeat these notices are merely courtesy notices and are not required by law. It is unfortunate that the lessees' request for an address change was not followed, but they accepted and held the lease for a year without calling the error to BLM's attention. More important the failure to receive a notice of rental due does not relieve a lessee of the obligation to pay the rental timely. Reliance upon receipt of a courtesy notice does not justify failure to pay rental on time. The obligation to pay on time arises from the terms of the statute. Samuel J. Testagrossa, 25 IBLA 64 (1976); Bobbie Arnold, 24 IBLA 352 (1976).

Furthermore, no notice of termination of the lease for failure to pay the rental on time was due the lessees of record under 43 CFR 3108.2-1(c) because the rental had not been tendered within 20 days of its due date, and they were, therefore, not entitled to the 15-day period provided therein to file a petition for reinstatement of the lease.

1/ Even if we were to assume that the lessees had tendered the rental payment during the 20-day period, the reasons advanced by them do not show "to the satisfaction of the Secretary of the Interior that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee," 30 U.S.C. § 188(c), under the criteria established by this Board in Louis Samuel, 8 IBLA 268 (1972); aff'd Samuel v. Morton, Civ. No. CV 74-1112-EC (D. Calif. C.D. sum-j Aug. 26, 1974), and numerous subsequent decisions.

[2] Finally, BLM's denial of appellant DiGiulio's request for approval of the assignment to him from Brantford Capital Corporation is correct for the two reasons given by it, either one of which, standing alone, would dictate disapproval of the assignment. First, the assignment and request for its approval was not filed with BLM until January 26, 1976, long after the lease terminated by operation of law. The lease was no longer in existence and the attempted assignment was, therefore, a nullity. See Clarence and Marguerite Zuzpann, 18 IBLA 1, 5-6 (1974); cf. Amoco Production Company, 16 IBLA 215 (1974).

Secondly, there is a fatal gap in the chain of title. The record is devoid of an assignment of any interest in the lease from Grande and Cohen to Brantford Capital Corporation or to anyone else. The mere allegation that Grande and Cohen had conveyed the 40 percent interest to Brantford Capital Corporation is of no moment. An assignment must be approved by BLM before the interest is effectively transferred. The regulations require that all instruments of transfer of a lease or of an interest therein must be filed for approval within 90 days from the date of final execution. 43 CFR 3106.1-3. It is possible, of course, that Grande and Cohen may have executed an assignment to Brantford Capital Corporation but, if so, the latter never submitted it to BLM for approval. Under the circumstances the assignment from Brantford to appellant DiGiulio could not be approved even if the lease was still in existence.

Appellant apparently feels that the retention of the \$ 10.00 filing fee he submitted with the assignment lends some substance to his appeal. This is not the case. The regulations provide that the required filing fee submitted with an application for approval of an assignment will not be returned even though the application later be withdrawn or rejected in whole or in part. 43 CFR 3106.2-1.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo
Administrative Judge

We Concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

